

(b) Prehearing conferences may be stenographically reported.

(c) The presiding officer shall enter an order which recites the action taken at the conference, the amendments allowed to the pleadings and agreements by the parties, and which limits the issues or defines the matters in controversy to be determined in the proceeding. Objections to the order may be filed by a party within five (5) days after service of the order, except that the regulatory staff may file objections to such order within ten (10) days after service. Parties may not file replies to the objections unless the board so directs. The filing of objections shall not stay the decision unless the presiding officer so orders. The board may revise the order in the light of the objections presented and, as permitted by § 2.718(i) may certify for determination to the Commission such matters raised in the objections as it deems appropriate. The order shall control the subsequent course of the proceeding unless modified for good cause.

[27 FR 377, Jan. 13, 1962, as amended at 37 FR 15136, July 28, 1972; 40 FR 8777, Mar. 3, 1975; 46 FR 30331, June 8, 1981]

§ 2.753 Stipulations.

Apart from any stipulations made during or as a result of a prehearing conference, the parties may stipulate in writing at any stage of the proceeding or orally during the hearing, any relevant fact or the contents or authenticity of any document. Such a stipulation may be received in evidence. The parties may also stipulate as to the procedure to be followed in the proceeding. Such stipulations may, on motion of all parties, be recognized by the presiding officer to govern the conduct of the proceeding.

[37 FR 15136, July 28, 1972]

§ 2.754 Proposed findings and conclusions.

(a) Any party to a proceeding may, or if directed by the presiding officer shall, file proposed findings of fact and

the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate or his designee in the proceeding pursuant to Part 51 of this chapter.

conclusions of law, briefs and a proposed form or order of decision within the time provided by the following subparagraphs, except as otherwise ordered by the presiding officer:

(1) The party who has the burden of proof shall, within thirty (30) days after the record is closed, file proposed findings of fact and conclusions of law and briefs, and a proposed form of order or decision.

(2) Other parties may file proposed findings, conclusions of law and briefs within forty (40) days after the record is closed. However, the staff may file such proposed findings, conclusions of law and briefs within fifty (50) days after the record is closed.

(3) A party who has the burden of proof may reply within five (5) days after filing of proposed findings and conclusions of law and briefs by other parties.

(b) Failure to file proposed findings of fact, conclusions of law or briefs when directed to do so may be deemed a default, and an order or initial decision may be entered accordingly.

(c) Proposed findings of fact must be clearly and concisely set forth in numbered paragraphs and must be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law must be set forth in numbered paragraphs as to all material issues of law or discretion presented on the record. An intervenor's proposed findings of fact and conclusions of law must be confined to issues which that party placed in controversy or sought to place in controversy in the proceeding.

[27 FR 377, Jan. 13, 1962, as amended at 28 FR 10154, Sept. 17, 1963; 35 FR 11459, July 17, 1970; 43 FR 17802, Apr. 26, 1978; 46 FR 30331, June 8, 1981; 54 FR 33182, Aug. 11, 1989]

§ 2.755 Oral argument before presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, he may allow and fix a time for the presentation of oral argument. He will impose appropriate limits of time on the argument. The transcript

of the argument shall be a part of the record.

§ 2.756 Informal procedures.

The Commission encourages the use of informal procedures consistent with the Act, sections 551–558 of title 5 of the United States Code, and the regulations in this chapter, and with the orderly conduct of the proceeding and the necessity for preserving a suitable record for review.

[35 FR 11459, July 17, 1970]

§ 2.757 Authority of presiding officer to regulate procedure in a hearing.

To prevent unnecessary delays or an unnecessarily large record, the presiding officer may:

- (a) Limit the number of witnesses whose testimony may be cumulative;
- (b) Strike argumentative, repetitious, cumulative, or irrelevant evidence;
- (c) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and
- (d) Impose such time limitations on arguments as he determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

[37 FR 15136, July 28, 1972]

§ 2.758 Consideration of Commission rules and regulations in adjudicatory proceedings.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, any rule or regulation of the Commission, or any provision thereof, issued in its program for the licensing of production and utilization facilities, source material, special nuclear material, or by-product material is not subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding involving initial or renewal licensing subject to this subpart.

(b) A party to an adjudicatory proceeding involving initial or renewal licensing subject to this subpart may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception made for the

particular proceeding. The sole ground for petition for waiver or exception shall be that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted. The petition shall be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted, and shall set forth with particularity the special circumstances alleged to justify the waiver or exception requested. Any other party may file a response thereto, by counter affidavit or otherwise.

(c) If, on the basis of the petition, affidavit and any response thereto provided for in paragraph (b) of this section, the presiding officer determines that the petitioning party has not made a prima facie showing that the application of the specific Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross-examination or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

(d) If, on the basis of the petition, affidavit and any response provided for in paragraph (b) of this section, the presiding officer determines that such a prima facie showing has been made, the presiding officer shall, before ruling thereon, certify directly to the Commission⁷ for determination the matter of whether the application of the Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding, in the context of this section,

⁷The matter will be certified to the Commission notwithstanding the provisions of § 2.785.